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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-CF-336
	)	
Adelphia Communications	)	NAL/Acct. No. 200232340003
	)	
Huntington, WV	)	FRN 0007-3942-16

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: July 19, 2002**

By the District Director, Columbia Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Adelphia Communications ("Adelphia") has apparently violated Section 11.61(a) of the Commission's Rules<sup>1</sup> ("Rules") by failing to conduct tests of the Emergency Alert System ("EAS") equipment and procedures as required. We conclude that Adelphia is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

**II. BACKGROUND**

2. On May 15, 2002, an agent from the Commission's Columbia, Maryland office conducted an inspection of Adelphia's Huntington, WV cable system for compliance with EAS rules. The agent found that Adelphia failed to conduct Required Weekly Tests of the EAS equipment during the month of February 2002, and once per month during the months of March, April, and May 2002. Further, Adelphia did not conduct Required Monthly Tests during the period January 11, 2002 through May 15, 2002. In addition, Adelphia received no weekly or monthly tests during the period January 11, 2002 through May 15, 2002. At the request of the agent, Adelphia transmitted a weekly test during the inspection, which revealed that the automatic logging device was functioning properly.

3. On May 15, 2002, the agent conducted inspections of EAS equipment and procedures at broadcast stations WEMM and WHRD in the Huntington area. Records of EAS tests received at those stations indicated that Local Primary stations WKEE-FM and WRVC, which Adelphia is required to monitor, conducted the required test transmissions during the above periods.

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<sup>1</sup> 47 C.F.R. § 11.61(a).

### III. DISCUSSION

4. Section 11.61(a)(1) of the Rules<sup>2</sup> requires that cable systems with 10,000 or more subscribers conduct monthly tests of the EAS header codes, attention signal, test script and EOM code. Section 11.61(a)(2) of the Rules<sup>3</sup> requires weekly tests of the EAS header codes and EOM codes. Section 11.61(b) of the Rules<sup>4</sup> requires that entries be made in the cable system records of EAS tests received and transmitted. At the time of inspection on May 15, 2002, Adelphia's records indicated that required weekly tests were transmitted during the month of January 2002. However, no tests were transmitted during February 2002, and only one weekly test was transmitted in each of the months of March, April, and May 2002. The records also showed that no weekly or monthly tests were received and that no monthly tests were transmitted during the period of January 11, 2002 through May 15, 2002. Further, evidence reveals that the Local Primary stations sending EAS tests, which Adelphia should have received, properly transmitted those tests.

5. Based on the evidence before us, we find that Adelphia willfully<sup>5</sup> and repeatedly<sup>6</sup> violated Section 11.61(a) of the Commission's Rules. The Rules do not establish a base forfeiture amount for violating the Commission's rule requiring EAS tests.<sup>7</sup> Therefore, we must determine what an appropriate forfeiture amount should be for this violation. The requirement that cable systems conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>8</sup>, sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring. As failure to make measurements or conduct required monitoring carries a base forfeiture amount of \$2,000, pursuant to the *Forfeiture Policy Statement*, the base forfeiture for not conducting EAS

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<sup>2</sup> 47 C.F.R. § 11.61(a)(1).

<sup>3</sup> 47 C.F.R. § 11.61(a)(2).

<sup>4</sup> 47 C.F.R. § 11.61(b).

<sup>5</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>6</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>7</sup> *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>8</sup> 47 C.F.R. § 1.80.

tests will be assessed in the amount of \$2,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended<sup>9</sup> (the “Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a two thousand dollar (\$2,000) monetary forfeiture is warranted.

#### **IV. ORDERING CLAUSES**

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>10</sup> and Sections 0.111, 0.311 and 1.80 of the Commission’s Rules,<sup>11</sup> Adelphia Communications is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$2,000) for willfully and repeatedly violating Section 11.61(a) of the Commission’s Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Adelphia Communications SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232340003, and FRN 0007-3942-16

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232340003

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

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<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. §§ 0.111, and 0.311.

<sup>12</sup> See 47 C.F.R. § 1.1914.

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12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Adelpia Communications, 51 West 6<sup>th</sup> Avenue, Huntington, WV 25701.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin  
District Director  
Columbia Office